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ABSTRACT

The amount of collective bargaining litigation remained high in 1988; however, there were no United States Supreme Court cases concerning collective bargaining in education, nor were there any new trends or developments. The review addresses the following topics at the K-12 level: (1) constitutional issues; (2) recognition and representation issues; (3) rights and obligations of exclusive bargaining representatives; (4) scope of bargaining; (5) grievability and arbitrability; (6) judicial review of arbitration awards and employment relations boards rulings; and (7) strikes and other job actions. (MLF)

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BARGAINING

Stephen B. Thomas

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INTRODUCTION

The amount of collective bargaining litigation remained high in 1988; however, there were no United States Supreme Court cases concerning collective bargaining in education, nor were there any new trends or developments. Notwithstanding the aforementioned, there were numerous related cases with unique factual situations. Cases involving K-12 are presented in this chapter; cases involving higher education are reviewed in Chapter 8.

CONSTITUTIONAL ISSUES

In 1988, two federal and four state cases dealt at least in part with constitutional claims. The Sixth Circuit Court of Appeals reviewed a complaint by nonunion teachers challenging the constitutionality of a union's agency fee collection procedure.[1] The district court, noting that it was likely that the procedures would be found unconstitutional, held that it would enjoin the collection of funds unless the board created an escrow account for placement of the fees, which it did. The plaintiffs then challenged the use of that account. The appeals court held that when the lower court permitted the use of the escrow account it abused its authority.

A second federal case emanated from South Carolina where the state education association challenged state legislation denying payroll deduction benefits to the association, although such benefits were provided at least one other similar organization.[2] The district court reasoned that the case primarily dealt with the right of the government to withhold a benefit (i.e., payroll deduction) on the basis of the political viewpoint of the potential beneficiary. The court found the practice to be inherently suspect and referenced *West Virginia State Board of Education v. Barnette* where the Supreme Court observed that, "[i]f there is any fixed star in our constitutional constellation it is that no official, high or low, can proscribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."[3] Given the aforementioned, the court held that the state had violated the first and fourteenth amendments when it denied payroll deductions for the plaintiff, while allowing the deductions for a similar, less controversial, association. The state was unable to show a compelling interest as required by the court under strict scrutiny.

In Indiana, a state court of appeals reviewed an action by a teachers'

1. Lowary v. Lexington Local Bd. of Educ., 854 F.2d 131 (6th Cir. 1988).
2. South Carolina Educ. Ass'n v. Campbell, 697 F. Supp. 908 (D.S.C. 1988).
3. 319 U.S. 624, 642 (1943).

union to require the payment of fair share assessments by nonmembers.[4] The nonmembers counterclaimed that the rebate schemes ancillary to the fair share assessment violated their first amendment, freedom of association rights. That scheme required nonmembers initially to pay the same amount as was paid by members. Funds were spent on collective bargaining, contract administration, and political and ideological activities. If a nonmember objected to the political and ideological activities that person could request a rebate of that portion of the fee allocated to the objectionable functions. However, this procedure allowed the union to retain, at least temporarily, funds not associated with negotiations and contract administration. In reaching its conclusion, the court reviewed *Chicago Teachers Union v. Hudson*.[5] In that 1986 case, the Supreme Court found a rebate plan similar to the one in the present case to violate the first amendment. Justice Stevens, writing for the majority, noted that,

> [a] remedy which merely offers dissenters the possibility of a rebate does not avoid the risk that dissenters' funds may be used temporarily for an improper purpose. The Union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining.[6]

Given the aforementioned, the state appeals court (Fourth District) held that the present rebate scheme also violated the first amendment.

In a second, almost identical, Indiana case in the Third District, the union charged that nonmember teachers had failed to pay representation fees.[7] The teachers counterclaimed that the association violated their constitutional rights by collecting fees for purposes unrelated to collective bargaining. The Third District Court of Appeals held for the teachers claiming that the rebate scheme was constitutionally inadequate and that the Indiana Education Employment Relations Board must resolve the dispute over the amount of the representation fee.

The final fee case of 1988 claimed a violation of both constitutional and civil rights. In that case, the Ohio Supreme Court was confronted with a complaint by nonmember teachers alleging that their payment of service fees violated their rights.[8] The lower courts had found the union's rebate procedures to be "constitutionally inadequate," and had enjoined the union from collecting fees from the plaintiffs. That decision was

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4. Cheeseman v. Jay School Corp. Classroom Teachers Ass'n, 527 N.E.2d 715 (Ind. Ct. App. 1988).
5. 106 S. Ct. 1066 (1986).
6. *Id.* at 1075.
7. Fort Wayne Educ. Ass'n, Inc. v. Aldrich, 527 N.E.2d 201 (Ind. Ct. App. 1988).
8. Gibney v. Toledo Bd. of Educ., 532 N.E.2d 1300 (Ohio 1988).

affirmed on appeal to the state high court where it was concluded that the teachers could not be required to pay fees until the union had established a constitutional method to rebate that portion of the fees that could not be retained under existing laws.

The final constitutional case of 1988 dealt with (1) a refusal of a corporation to release insurance rating information to school districts and (2) related administrative proceedings commenced by the Commissioner of Insurance.[9] A nonprofit voluntary employee's beneficiary association provided insurance to member districts (i.e., a form of "insurance pooling"). Selected members had requested to review claims and ratings to determine if pooling was beneficial or if a separate district policy might be more cost efficient. The corporation refused to provide the information for fear that the districts with the best claims-to-premium ratio might choose to withdraw from the group. Such a practice was viewed by the Commissioner of Insurance as violating state law. The corporation claimed as its defense that the controversial statute was unenforceable since it was contrary to provisions of the state constitution. The Michigan Court of Appeals held that statutes are presumed to be constitutional, unless their unconstitutionality is clearly apparent, and that the intent of the extant law had not been impermissibly altered. The court noted that the statute was not limited in application to workers' compensation insurance and that the statute did not violate the "change of purpose" clause of the state constitution.

Recognition and Representation Issues

Unit Determination

This section includes six cases: one dealing with chairpersons, one involving athletic directors and coaches, two involving substitute teachers, and two filed by nonprofessional employees.

Supervisory, Managerial, and Confidential Employees. In New York State, the Public Employment Relations Board (PERB) denied a school district's application for certification of a separate bargaining unit for seventeen teachers who were designated as chairpersons.[10] On review, the court found the decision to be arbitrary and capricious. On two previous occasions, PERB had allowed the splintering of the bargaining unit under similar circumstances. In the present case, PERB failed to explain why it chose not to follow established

9. Michigan Educ. Special Servs. Ass'n v. Commissioner of Ins., 425 N.W.2d 157 (Mich. Ct. App. 1988).

10. Uniondale Union Free School Dist. v. Newman, 528 N.Y.S.2d 655 (App. Div. 1988).

precedent. Accordingly, the Supreme Court, Appellate Division held that PERB's failure to explain its inconsistent determinations mandated that the instant determination be annulled.

A teachers' association and school board in Indiana entered into a collective bargaining agreement in September of 1985.[11] One month later the board petitioned to exclude the positions of assistant athletic director, head high school boy's basketball coach, and head high school football coach from the teacher's bargaining unit. The state employment relations board determined that the three positions were supervisory and should be excluded from the bargaining unit. The teachers' association filed a petition for judicial review. The state court of appeals held that the board acted within its statutory jurisdiction.

An employer in Ohio appealed an order from the state Employment Relations Board (ERB) certifying a teachers' union as the exclusive bargaining unit of its employees.[12] A court of common pleas dismissed and appeal was made. The court of appeals reversed, and the Ohio Supreme Court affirmed. The state high court held that the board's adjudications were subject to review, including the certification order and the determination of who may vote in the rerun election.

Substitute, Part-time, and Nonprofessional Employees. A social services union in California filed a representation petition with the NLRB to obtain an election to determine whether it could represent two units within a private, religious school: Unit A consisted of all full-time and regular part-time child-care workers, recreation assistants, cooks, cook helpers, and maintenance employees; Unit B consisted of all office clerical employees.[13] The private school challenged the NLRB's jurisdiction on the ground that it was a church-operated school and therefore exempt from the NLRA under the Supreme Court's decision in *NLRB v. Catholic Bishop of Chicago*.[14] The NLRB disagreed with the school's counterclaim and concluded that the employees were not involved with the religious mission of the institution. Following a series of related appeals the Ninth Circuit eventually held for the union.

In Illinois, a vocational education authority challenged the decision of the Educational Labor Relations Board (ELRB) to approve an election in which nonprofessional employees were added to the professional employees bargaining unit.[15] The groups had been com-

11. Board of School Trustees of the Marion Community Schools v. Marion Teachers' Ass'n, 530 N.E.2d 309 (Ind. Ct. App. 1988).

12. South Community, Inc. v. State Employment Relations Bd., 527 N.E.2d 864 (Ohio 1988).

13. Hanna Boys Center v. Miller, 853 F.2d 682 (9th Cir. 1988).

14. 440 U.S. 490 (1979).

15. Dupage Area Vocational Educ. Auth. v. State Educ. Labor Relations Bd., 522 N.E.2d 292 (Ill. App. Ct. 1988).

bined in spite of the fact that the professional employees had not voted to determine whether they wished to have the nonprofessional employees included in the bargaining unit. As a result, the court ordered the certification of the unit to be vacated and remanded the cause for a separate vote by the preexisting group of professional employees.

Substitute teachers in Michigan sought to become part of the same bargaining unit as regular, full-time teachers.[16] The local board of education challenged the decision of the state Employment Relations Commission to allow the accretion of substitute teachers. The state appeals court upheld the commission's decision noting that although substitutes did not work the same number of hours as regular teachers, they were expected to perform essentially the same jobs and to be "professional in every manner."[17]

There was a similar case in Iowa, where a local education association petitioned the PERB to amend its collective bargaining unit to add substitute teachers.[18] The board ruled that substitute teachers performing service each of four consecutive months qualified as public employees covered by the Public Employment Relations Act and therefore were entitled to the benefits of collective bargaining. That decision was upheld on appeal by the Supreme Court of Iowa.

Rights and Obligations of Exclusive Bargaining Representatives

Cases in this section deal with union rights and obligations: four cases dealt with rights (fee assessment), two cases dealt with obligations.

Union Rights

Employees of a local board brought suit in the District of Columbia claiming that the board had unlawfully withheld union dues from their wages after expiration of the collective bargaining agreement.[19] The court held that the plaintiffs had failed to exhaust their administrative remedies and that the PERB had the primary jurisdiction to decide whether the conduct represented an unfair labor practice.

In another fee-related case, the Supreme Court of Vermont held that an agency fee agreement violated the state Labor Relations for Teachers

16. Taylor Fed'n of Teachers, MFT, AFT, AFL-CIO v. Taylor Bd. of Educ., 423 N.W.2d 44 (Mich. Ct. App. 1988).

17. *Id.* at 48.

18. Dubuque Community School Dist. v. Public Employment Relations Bd., 424 N.W.2d 427 (Iowa 1988).

19. Hawkins v. Hall, 537 A.2d 571 (D.C. 1988).

Act and that the subsequent inclusion of teachers in the Municipal Labor Relations Act did not repeal the agency fee prohibition.[20]

In Connecticut, the state supreme court was asked to determine the legality of a "fair share" service fee assessed nonmembers.[21] The fee reflected the costs of collective bargaining, contract administration, and grievance adjustments. The court upheld the fee and noted that employees who reap the benefits of an exclusive representative's collective bargaining efforts may be required to pay their fair share of related costs.

The Massachusetts Labor Relations Commission ordered a school committee to enforce the agency service fee clause of the collective bargaining agreement by terminating the employment of a teacher who refused to pay that fee.[22] The Supreme Judicial Court of Massachusetts held that the commission had the jurisdiction to discharge the teacher; that the failure to discharge was a prohibited practice; and that the teacher had been given adequate notice.

Obligations of Exclusive Representatives

Plaintiff in a Michigan case claimed that she was wrongfully laid off by the school district and that the teachers' union failed to properly represent her.[23] She claimed that the contract agreed to by the union had been altered with consent of the membership. Specifically, she complained about the change of date required for notification when a teacher is to be laid off. The state court of appeals affirmed the lower court decision that the six-month statute of limitations found in the Public Employment Relations Act applied to the teacher's claim and that time had expired.

In the final case in this section, the Minnesota Court of Appeals heard a case where a former school district secretary brought action (1) against the district seeking reinstatement following a requested personal leave and (2) against the union for failing to provide her with fair representation.[24] In a fairly complex case, involving two negotiated agreements, several "verbal understandings," and a rescinded school board vote, the plaintiff was denied reassignment to her former position following a leave of absence where she wanted to "try out a new job." The appeals court determined that the agreement between the secretary

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20. Weissenstein v. Burlington Bd. of School Comm'rs, 543 A.2d 691 (Vt. 1988).
21. Kilpatrick v. Board of Educ. of Fairfield, 535 A.2d 1311 (Conn. 1988).
22. Whittier Regional School Comm. v. Labor Relations Comm'n, 517 N.E.2d 840 (Mass. 1988).
23. Leidet v. Fitzgerald Educ. Ass'n, 421 N.W.2d 635 (Mich. Ct. App. 1988).
24. Whipple v. Independent School Dist. No. 621, 424 N.W.2d 559 (Minn. Ct. App. 1988).

and the district whereby the secretary would be granted leave but would retain her seniority rights was not an unfair labor practice. However, the court ruled that the employee was not entitled to reinstatement and that the evidence sustained the finding that the union had not violated its duty of fair representation. [For additional cases dealing with dismissal, nonrenewal, reduction-in-force, layoff, and demotions, see subsection under "Judicial Review."]

SCOPE OF BARGAINING

This section includes cases that deal primarily with the scope of bargaining: mandatory, permissive, and prohibited. Nine related cases were decided in 1988—five involved mandatory topics and four involved prohibited topics.

Mandatory Topics of Bargaining

Of the five cases included in this subsection two were decided by federal circuit courts and three were ruled on by state appeals courts. In the first case, the District of Columbia Circuit Court of Appeals reviewed an appeal of the Overseas Education Association.[25] In that case, the Department of Defense Dependence Schools (DODDS) claimed that a proposal from the bargaining unit relating to travel and educational benefits for unit members upon retirement or departure from DODDS was not a required subject of bargaining. The Federal Labor Relations Authority agreed that the proposal was not within the employer's duty to bargain and the association petitioned for review. The court of appeals denied the petition and reasoned that the request failed to satisfy the threshold negotiability criterion of affecting working conditions.

The Eleventh Circuit was asked to review an order issued by the Federal Labor Relations Authority (FLRA) requiring the United States Army to negotiate selected items with the union representing employees of the school serving army personnel dependents.[26] The union had submitted three proposals to the Army during the course of negotiations: the first involved mileage reimbursement, insurance, and salary schedules; the second proposed a fixed salary increase of 13.5%; the third included personal leave, sick leave, professional leave, maternity leave, and leave without pay. The Army refused to negotiate, contending that none of the proposals was a mandatory subject of negotiation. The

25. Overseas Educ. Ass'n, Inc. v. Federal Labor Relations Auth., 858 F.2d 769 (D.C. Cir. 1988).

26. Fort Stewart Schools v. Federal Labor Relations Auth., 860 F.2d 396 (11th Cir. 1988).

27. Northwestern School Corp. of Henry County Bd. of School Trustees v. Indiana Educ. Employment Relations Bd., 529 N.E.2d 847 (Ind. Ct. App. 1988).

FLRA disagreed with the Army and concluded that each item was in fact a condition of employment and therefore a mandatory item in negotiations. On appeal, the Eleventh Circuit affirmed the FLRA decision.

In Indiana, a lower court ruling that the board had committed an unfair labor practice was appealed.[27] The board had refused to bargain school calendar items with the teachers' labor union resulting in the filing of a complaint with the Indiana Education Employment Relations Board (IEERB). The IEERB hearing officer noted that the 1972-73 agreement between the union and school district included the establishment of a school calendar among its negotiable items. The hearing officer then concluded that selected items within the school calendar remained mandatory in 1983. The appeals court held that although the school calendar is not a proper subject of negotiations, selected items which do not infringe upon a school board's exclusive managerial power remain bargainable under state law.

The state legislature in New York enacted the Excellence in Teaching apportionment program (EIT) whereby local school districts could apply for special funds which could be used to supplement the salaries of eligible teachers. A local board voted not to apply for the funds because it would be responsible for paying approximately $100,000 in increased Social Security taxes, retirement system assessments, and fringe benefits, and because the existing collective bargaining agreement extended from 1985 to 1990 and was viewed by the board as providing substantial salary increases. The local teachers' union claimed that the decision whether to apply for EIT funds was a mandatory item to be negotiated. When the board refused to negotiate, the union filed an improper practice charge. The Administrative Law Judge concluded that the decision should have been negotiated and the PERB ultimately affirmed that decision. On further appeal, the Supreme Court, Appellate Division reversed, holding that the legislative history of the Act supports the position that districts must negotiate the distribution of EIT funds, but that the Act was silent on the duty to negotiate whether to apply for the funds.[28]

Indiana law prohibits teacher strikes and replaces the strike weapon with a requirement of good faith bargaining with the school employee association's exclusive representative regarding mandatory subjects (e.g., wages, salary, hours). However, although the employer must discuss, it is not required to bargain on certain nonmandatory subjects. If an impasse is declared the Indiana Education Employment Relations Board (IEERB) is required to appoint a mediator; furthermore, if a

28. City School Dist. of Elmira v. New York State Pub. Employment Relations Bd., 536 N.Y.S.2d 214 (App. Div. 1988).

mediator fails to facilitate a solution the IEERB then must initiate fact-finding. The purpose of the latter is to provide a neutral advisory opinion. In 1988, a local school district alleged that the IEERB was involved in illegal fact-finding. A state appeals court disagreed and affirmed the lower court decision that the IEERB may receive evidence over the school employer's objection that the evidence was outside the scope of mandatory subjects of bargaining.[29]

Prohibited Topics of Bargaining

Among the four cases in this subsection, one was decided by a federal circuit court and three were ruled on by state appeals courts. In the first case, the Second Circuit Court of Appeals reviewed a case where a teachers' union challenged a FLRA decision that use of personal service contracts, accommodation of employee preferences in assigning extracurricular duties, and school calendar were not mandatory subjects of bargaining.[30] The Army counterclaimed that it did not have to negotiate with the teachers over salary schedule. The appeals court concluded that the use of personal service contracts was unlawful; that the employee preference proposal did not interfere with the agency's right to assign employees; that the school calendar was not negotiable; and that the negotiation of the salary schedule was mandatory.

The Oregon Employment Relations Board ruled that the school district had failed to bargain in good faith over seniority rights during layoff.[31] The district proponed that the topic was prohibited, given that it is regulated by state statute. The union had proposed a two-track system: one for part-time, another for full-time. Under the plan, a teacher who was hired as part-time and later became full-time could not count part-time employment toward seniority on the full-time scale. Accordingly, a person could teach ten years for the district, five part-time and five full-time, and receive only five years seniority. The state appeals acourt held that the aforementioned proposal would have violated state statute mandating one seniority track for teachers, and thus the proposal was a prohibited subject of bargaining.

In Michigan, a local board of education decided to cease operating a special education center and to transfer related functions and responsibilities to an intermediate school district.[32] The teachers' union claimed an unfair labor practice. The Employer Relations Commission reviewed

29. Blackford County Schools v. Indiana Educ. Employment Relations Bd., 519 N.E.2d 169 (Ind. Ct. App. 1988).

30. West Point Elementary School Teachers Ass'n v. Federal Labor Relations Auth., 855 F.2d 936 (2d. Cir. 1988).

31. Eugene Educ. Ass'n v. Eugene School Dist., 754 P.2d 580 (Or. Ct. App. 1988).

32. Bay City Educ. Ass'n v. Bay City Pub. Schools, 422 N.W.2d 504 (Mich. 1988).

the situation and concluded that there was no duty to bargain the decision. On appeal, the state supreme court held that the local board's decision was an educational policy decision within its managerial discretion rather than a term and condition of employment subject to a duty to bargain.

The Supreme Court of North Dakota affirmed the dismissal of a lower court of a complaint filed by an education association that the district could not change the number of class periods to be taught in a standard day by full-time teachers without first negotiating in good faith.[33] Prior to the 1987-88 school year, a standard school day consisted of five class periods of fifty-five minutes each, for a total of 275 minutes. If a teacher taught a sixth period, the teacher received additional compensation. Notwithstanding past practice, in April of 1987, the board established a daily teaching schedule of six periods of forty-seven minutes each, for a total of 282 minutes. The high court noted that the negotiated agreement did not spell out the number of class periods in a standard day or require additional compensation for teaching an additional period. Accordingly, the dismissal was upheld.

Grievability and Arbitrability

Cases in this subsection deal primarily with whether a dispute is grievable or arbitrable, who determines if a dispute is grievable or arbitrable, what procedures must be followed, and what acts fall under the umbrella of managerial prerogative. There were seven related cases in these categories in 1988: two under "Presumption and Arbitrability" and five under "Who Determines."

Presumption and Arbitrability

As mentioned above, there were two cases in 1988 that have been included in this subsection: one from Colorado, the other from Illinois. In the Colorado case, a nontenured teacher failed to receive the recommendation of her principal for reappointment.[34] As a result, she tendered six grievances to her principal challenging the content of her evaluations as well as the procedures that were followed during the evaluation process. The union demanded arbitration, but the board claimed that the grievances were not arbitrable. The union dropped the claim, but the teacher filed suit approximately one year later. The trial court denied the requested relief on the grounds that the plaintiff lacked standing to bring the action, and noted that even if she had standing, she was

33. Mandan Educ. Ass'n v. Mandan Pub. School Dist. No. 1, 425 N.W.2d 917 (N.D. 1988).

34. Thomas v. Thompson School Dist. R2-J, 749 P.2d 966 (Colo. Ct. App. 1988).

precluded from acquiring relief by virtue of the doctrine of laches.

A varsity football coach in New York received poor performance evaluations in his capacity as coach and, as a result, was not offered a coaching contract for the next year; his tenured position as a physical education instructor was not affected.[35] The teacher association filed a grievance on his behalf claiming a violation of two portions of the negotiated agreement; one dealt with procedures of evaluation; the other stipulated that a teacher is not to be deprived of a "professional advantage" without just cause. The lower court held for the board and appeal was made by the union. On appeal, the Supreme Court, Appellate Division concluded that the demand for arbitration was sufficiently specific for the lower court to have determined that an arbitrable dispute existed and that although the arbitrator could not order the renewal of the former coach, he still had broad power to fashion other relief. However, the court further noted that the authority to assess qualifications of teachers for appointment to coaching positions was a nondelegable responsibility of the board of education.

Who Determines

Cases from Ohio, Illinois, Pennsylvania, and California are included in this subsection. A limited contract employee of an Ohio school district filed a grievance after she learned that her contract was not to be renewed.[36] The arbitrator held that employees on limited contract were not included within the negotiated agreement. On appeal, the court of common pleas made an independent construction of the agreement and concluded that the issue was arbitrable. The board appealed that decision to the state court of appeals. The intermediate court reversed and proponed that the lower court should not have made an independent determination of arbitrability, but rather should have reviewed the arbitrator's decision under statutory guidelines.

An Illinois school district filed suit questioning the validity of a provision of its collective bargaining agreement.[37] The lower court held for the district and concluded that a portion of the agreement was illegal. The judge then ordered the parties to bargain in good faith regarding promotion, transfer, and job elimination. The union appealed the decision, which was later vacated by the state appellate court. The appellate

35. Riverhead Cent. School Dist. v. Riverhead Cent. Faculty Ass'n, 528 N.Y.S.2d 611 (App. Div. 1988).

36. Springfield Local Ass'n of Classroom Teachers v. Springfield Local School Dist. Bd. of Educ., 525 N.E.2d 27 (Ohio Ct. App. 1988).

37. Board of Educ., Benton Consol. School Dist. No. 47 v. Benton Fed'n of Teachers, Local No. 1956, 518 N.E.2d 1257 (Ill. App. Ct. 1988).

court reasoned that the circuit court lacked jurisdiction to determine arbitrability of provisions of collective bargaining agreements.

A Pennsylvania teacher was suspended for three days for distributing copies of sexually suggestive material by placing them in school mailboxes.[38] After receiving the penalty, he filed a grievance claiming that the suspension violated the collective bargaining agreement. The district claimed that the grievance was not arbitrable and that disciplinary suspensions were not covered. The arbitrator disagreed on the basis of an implied "just cause" provision. However, the arbitrator further determined that the suspension was justified, but should have been for one day, rather than three. The district appealed to the court of common pleas. That court reversed and held that there was no implied just cause provision in the contract and that the arbitrator lacked the authority to review the claim. That opinion was reversed on further appeal to the commonwealth court, however, where the grievance was found arbitrable as was the reduction in penalty.

A teachers' association in California requested arbitration of a grievance filed by a nonrenewed kindergarten teacher.[39] The local district refused to arbitrate the issue and the association filed suit. The trial court denied the petition and appeal was made. The appeals court affirmed the lower court ruling and noted that it was the court, and not the arbitrator, that must determine whether the issue was arbitrable and that in the present case the teacher's dismissal was not a proper subject of arbitration.

In the final case in this section, the Connecticut Court of Appeals reviewed a case dealing with a state's effort to vacate an arbitrator's decision to uphold a community college employee's grievance concerning her termination.[40] The grievant, a payroll clerk, served nine months as a provisional employee and later, after passing a competitive examination, was appointed as a permanent employee. Less than five months later her employment was terminated. She filed a grievance seeking to determine whether the termination was for just cause. The state contended that the dispute was not subject to arbitration under the collective bargaining agreement. That agreement stipulates that permanent employees may be dismissed within a six month probationary "working test period." An arbitrator determined that the dispute was arbitrable, upheld the grievance, and required the district to reinstate the clerk and provide her with back wages. However, the appellate court held that the arbi-

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38. North East Educ. Ass'n v. North East School Dist., 542 A.2d 1053 (Pa. Commw. Ct. 1988).

39. Fontana Teachers Ass'n v. Fontana Unified School Dist., 247 Cal. Rptr. 761 (Ct. App. 1988).

40. State v. AFSCME, Council 4, 537 A.2d 517 (Conn. App. Ct. 1988).

trator exceeded her authority in that the dispute was not arbitrable. Employment prior to receiving a permanent assignment could not be included in determining whether the employee had completed her six-month probationary period.

JUDICIAL REVIEW

Propriety of Arbitral Awards and Agency Decisions

Decisions of arbitrators and employment relations boards generally are given great deference by the courts. Exceptions to this general practice exist when such decisions are arbitrary, not based on contract, or in conflict with state or federal statute or constitution. Notwithstanding the aforementioned, there were numerous occasions in 1988 when either the district or the union appealed an arbitrator's or an agency's decision. For 1988, those cases can be grouped into nine main categories: salary inssues; teaching schedule; supplemental duties; bargaining unit work; use of certified employees; school calendar; annexed and consolidated districts; dismissal, nonrenewal, reduction-in-force, layoff, and demotions; and promotion.

Salary Issues. A three-year collective bargaining agreement in New York provided in pertinent part that all course credits would be accepted for movement on the salary schedule, except in-service credits earned prior to the effective date of the contract. If a teacher wished the credits to count, the teacher must "consult" with the superintendent prior to enrollment. A teacher, following the stipulated procedure, submitted a course review request so that she might count the credit earned in a public relations course. The superintendent refused her request. The teacher filed a grievance claiming that the superintendent did not have the authority to approve or disapprove and that the credits should count. The arbitrator agreed with the plaintiff and appeal was made by the district claiming that the arbitrator had exceeded his authority. The trial court confirmed the arbitrator's decision and dismissed the proceedings on the merits. Further appeal was made to the Supreme Court, Appellate Division where the lower court ruling was affirmed. The appeals court noted that the arbitrator's decision was not irrational, did not exceed a specifically enumerated limitation on his power, and did not violate public policy.[41]

In Florida a teacher alleged that his salary was set too low, arguing that the board had not given adequate credit, as required by the nego-

41. Board of Educ. of Mt. Sinai Union Free School Dist. v. Mt. Sinai Teachers' Ass'n, 527 N.Y.S.2d 484 (App. Div. 1988).

tiated agreement, for his twenty years of military experience.[42] The arbitration panel decided in favor of the board and found that the provision of the contract dealing with military credit was ambiguous and that there was insufficient evidence that the plaintiff received "inequitable experience credit." Judicial review then was sought where the trial judge nullified the arbitration panel's decision and held that the plaintiff could proceed to trial on the merits of his dispute. Petition then was granted by the state court of appeals which held that a trial on the merits was not available to the plaintiff after the parties opted for a nonjudicial forum by agreement. As a result, the lower court order was quashed and the case was remanded.

A California school district presented the local teachers' association with its "last, best, and final" offer, which included employment hours, grievance procedures, fringe benefits, and an 8% salary increase. The association refused to take the offer to the general membership for a secret ballot, although the district had so requested. Because of this refusal, the district decided to bypass the association and distribute the offer directly to the members. Additionally, the district informed the representative of the classified employees that their wages would be adjusted from a 5% increase to an 8% increase, equal to that proposed for the teachers and consistent with an earlier "parity agreement." The teachers' association then filed an unfair practice charge with the PERB claiming that the salary increase for classified employees and the direct offer to faculty violated state law. The PERB dismissed the second charge and later ruled for the district regarding the first. Eventually the issue was before the state supreme court which concluded that the parity agreement did not (1) violate the statutory requirement that classified and certificated employees not be included in the same bargaining unit, and (2) result in a violation of the district's duty to bargain in good faith with its certificated employees.[43]

A local education association in Pennsylvania filed a grievance on behalf of employees who were hired at salaries allegedly below the amount agreed to in contract. In the event of such a disagreement, the contract also required that the dispute be heard by an arbitrator. The arbitrator's decision was to be binding and final. Following a review of the contract and the dispute, the arbitrator ruled in favor of the employees; that decision was appealed to the court of common pleas where it was affirmed. On further appeal to the commonwealth court, the

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42. District School Bd. of St. Johns County v. Timoney, 524 So. 2d 1129 (Fla. Dist. Ct. App. 1988).

43. Banning Teachers Ass'n v. Public Employment Relations Bd., 750 P.2d 313 (Cal. 1988).

decision was again affirmed, and the court concluded that the arbitrator's award drew its essence from the collective bargaining agreement.[44]

The Supreme Court of North Dakota affirmed a lower court decision regarding part-time teachers who had charged that their contracts did not conform with the negotiated master contract. The lower court had ruled that the master contract was ambiguous, but that the district's method of giving one-half salary step under the schedule for each part-time year served was consistent with the contract and not a violation. The state high court concluded that the findings of the lower court were not clearly erroneous.[45]

A federal district court in Illinois was the first court to interpret the enforcement provisions of the Prevailing Wage Act of Illinois. A dispute arose regarding the wages paid employees responsible for asbestos abatement within a school. Such wages were below that stipulated by the Prevailing Wage Act. The court held in favor of the plaintiff and observed that the public contractor's failure to specify the amount of prevailing wages was not fatal to the worker's claim under state law.[46]

Teaching Schedule. In Illinois, a teacher was denied an extended-day schedule, notwithstanding the fact that he had the expertise to teach classes being taught by full-time faculty on overload or by a substitute teacher. The Educational Labor Relations Board, and later an Illinois appellate court, held that the board had engaged in an unfair labor practice.[47]

Supplemental Duties. A classroom teacher in Ohio protested the assignment of "homeroom duties." She had worked in the district for over a decade and had not been assigned such duties previously. As a result, she filed a grievance challenging the assignment and eventually prevailed. However, when she received her annual evaluation, it contained a checkmark on "improvement needed" regarding cooperation with colleagues. She then claimed that the poor evaluation was in retaliation to her earlier grievance. The Ohio Court of Appeals concluded that the poor evaluation was merited because she had not properly performed her homeroom responsibilities, notwithstanding the fact that they had been improperly assigned in the first place.[48]

Teachers in Pennsylvania failed to attend several parent-teacher conferences and had their pay docked accordingly. The collective bar-

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44. West Shore School Dist. v. West Shore Educ. Ass'n, 536 A.2d 483 (Pa. Commw. Ct. 1988).

45. Beeson v. Wyndmere Pub. School Dist. No. 42, 427 N.W.2d 346 (N.D. 1988).

46. Contreras v. Control Resources Corp., 680 F. Supp. 289 (N.D. Ill. 1988).

47. Board of Educ. of Chicago v. Illinois Educ. Labor Relations Bd., 524 N.E.2d 711 (Ill. App. Ct. 1988).

48. Akron Bd. of Educ. v. State Employment Relations Bd., 526 N.E.2d 115 (Ohio Ct. App. 1988).

gaining agreement stipulated that teachers were to attend two parent-teacher conferences and six faculty meetings per school year. The conferences and meetings were considered as part of their normal work day. After having their pay docked for nonattendance, the teachers filed a grievance. The arbitrator determined that attendance was required and that the district had the right to discipline the teachers, but that the district could not dock their pay since that money already had been earned by the teachers. The district appealed. The trial court vacated the award and held that it was not rationally derived from the terms of the collective bargaining agreement. The lower court concluded that failure to attend represented a breach of contract and that the docking of pay was a permissible means of disciplining those teachers who failed to attend. The association appealed to the commonwealth court where the lower court ruling was reversed. The commonwealth court held that the arbitrator's original ruling drew its essence from the agreement.[49]

The collective bargaining agreement entered into by a teachers' union and a New York school district required in pertinent part that:

> Planning-preparation time shall be provided so that teachers may have time during the required work day to engage in such professional responsibilities as grading and correcting papers, planning lessons and tests, and conferring with pupils, parents, and other staff members. This time shall be apart from the time teachers meet their classes or have other scheduled or required duties.

Notwithstanding the aforementioned, the district revived a team-teaching program for two middle schools and required selected teachers to attend planning sessions on a regular daily basis during the planning/preparation period. Following the review of the resulting grievance, the arbitrator ruled in favor of the association and ordered the district to cease and desist from requiring attendance at the meetings. The arbitrator also ordered the district to pay designated amounts to the teachers who already had attended such meetings without compensation. The Supreme Court, Appellate Division, affirmed the award and held that the arbitrator's decision did not violate public policy and was not punitive.[50]

Bargaining Unit Work. This section includes cases from Michigan, Pennsylvania, and Ohio. In the Michigan case, the district employed ten roofers, but later hired private roofing contractors to remove and replace the roofs on several of its buildings. The union then filed a grievance claiming that "normal bargaining unit work" was being con-

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49. Wilkes-Barre Area Educ. Ass'n v. Wilkes-Barre Area School Dist., 538 A.2d 81 (Pa. Commw. Ct. 1988).

50. Trudeau, *In re*, 524 N.Y.S.2d 856 (App. Div. 1988).

tracted out, thereby violating the collective bargaining agreement. The relief sought was the overtime income that the employees would have received had they performed the work. The arbitrator ruled in favor of the union and used a formula based on the difference between the number of hours worked by the private roofers and the number of hours worked by the employees during the same period. The school district appealed to the circuit court to vacate the arbitrator's award. The lower court ruled on behalf of the district and claimed that the arbitrator had exceeded his authority by deciding matters not subject to arbitration and by ruling that the work was a reasonable opportunity for overtime for the employees. The state appeals court affirmed in part the lower court decision and held that although the district waived the issue of arbitrability by voluntarily participating in arbitration, it still could claim that the arbitrator exceeded his authority during those proceedings. Furthermore, the appeals court agreed with the lower court that the arbitrator was incorrect in declaring that roof replacement was normal bargaining unit work. Notwithstanding the above, the appeals court further concluded that the arbitrator could in fact determine that the work was a reasonable opportunity for overtime for union employees.[51]

A Pennsylvania school district decided to close certain of its schools and to send the students to a neighboring school district.[52] The union filed a grievance claiming that the district had violated the bargaining agreement by subcontracting bargaining unit work. The grievance was granted by an arbitrator who ordered the district to rescind its decision to subcontract and to bargain in good faith. Furthermore, the district was mandated to make whole all of the affected teachers. The district petitioned the court of common pleas to vacate, modify, or correct the arbitrator's decision, which it did, except for that portion which required the district to make whole the teachers for the period August 26 to August 31—the days remaining on the collective bargaining agreement. The association appealed this decision to the Commonwealth Court of Pennsylvania. That court affirmed the lower court decision.

Following the retirement of three school nurses and the restructuring of the health services program, only one replacement nurse was hired. In the alternative, two aides were employed to perform selected health services and to do clerical work. These changes were not negotiated with the employee union, but rather were based on the findings of a study prepared for the superintendent. The union claimed that the

51. Flint School Dist. v. Service Employees Int'l Union, AFL-CIO, 423 N.W.2d 608 (Mich. Ct. App. 1988).

52. Midland Educ. Ass'n, PSSPA/PSEA v. Midland Borough School Dist., 541 A.2d 428 (Pa. Commw. Ct. 1988).

changes resulted in the reassignment of work from bargaining unit members (nurses) to nonbargaining unit members (aides) and thus violated state labor law. The Ohio Supreme Court reversed the appeals court decision, which was in favor of the district, and concluded that the reassignment was a mandatory subject for collective bargaining.[53] The state high court observed that the confusion in the case was due to the General Assembly's use of the term "affect." The controversial portion of statute mandates collective bargaining of decisions that "affect" wages, hours, and other terms and conditions of employment. The word "affect," according to the court, suggests that management rights which act upon or produce a material influence upon working conditions are subject to negotiation.

Use of Certified Employees. Another Pennsylvania case dealt with the decision of an arbitrator that the school district had ignored the bargaining agreement when it hired two noncertificated individuals to fill coaching positions when a certificated person had applied. The Commonwealth Court of Pennsylvania upheld the arbitrator's decision on appeal as being drawn from the essence of the agreement.[54]

School Calendar. In an Illinois case, a local teachers' association filed a charge with the state labor relations board alleging that the district had engaged in an unfair labor practice when it unilaterally changed December 23 from a vacation day to a pupil attendance day without first submitting the issue for bargaining.[55] The addition of this day to the school calendar was in response to state law where Casimir Pulaski's birthday was changed from a commemorative holiday to a scheduled legal holiday. The labor relations board dismissed the complaint and appeal was made. An Illinois appellate court affirmed and concluded that the board was entitled to rely on the broad waiver language of the zipper clause of the agreement in determining that the union had waived its right to midterm bargaining.

Annexed and Consolidated Districts. Teachers in an annexed school district in Michigan brought an unfair labor practice charge against the annexing district. A hearing officer, as well as the Employment Relations Commission dismissed the charges. On appeal, the state appeals court held that the annexing district was not obligated to honor the contract between the annexed school district and its teachers. The teachers had claimed that the new district was the "alter ego" of the prior district, in that (1) the union of the two districts was planned by the two

53. Lorain City School Dist. Bd. of Educ. v. State Employment Relations Bd., 533 N.E.2d 264 (Ohio 1988).

54. Crestwood Educ. Ass'n v. Crestwood School Dist., 535 A.2d 759 (Pa. Commw. Ct. 1988).

55. East Richland Educ. Ass'n, IEA-NEA v. Illinois Educ. Labor Relations Bd., 528 N.E.2d 751 (Ill. App. Ct. 1988).

boards, (2) the curriculum for the new district was jointly prepared, and (3) many former employees of the annexed district were assigned to the new district. However, the court disagreed and applied the *Crawford* test requiring the district to show that the consolidated district is substantially identical to the prior districts. This test was not passed to the court's satisfaction, given the significant changes in "management, supervision, and ownership." Furthermore, the court observed that most case law supporting an "alter ego" relationship involves private, rather than public employers and that in the present case such a relationship did not exist.[56]

Dismissal, Nonrenewal, Reduction-in-force, Layoff, and Demotion. An Oregon teacher was removed as head basketball coach and filed a grievance alleging race and age discrimination. The district claimed that the grievance was not arbitrable and the association filed an unfair labor practice complaint with the ERB. Following a review, the ERB ordered the district to arbitrate and the district sought judicial review. Shortly thereafter, the former coach filed a civil rights action in federal court, which he won. The district settled with the former coach, and he then withdrew his grievance. However, the association and the district continued their disagreement over the arbitrability of discrimination cases that involve only extra duties. On appeal to the state court of appeals, the petition was dismissed as moot: the district's petition for review was moot, because of the settlement between the district and teacher; likewise, the ERB case was moot, notwithstanding the continuing dispute between the union and the employer.[57]

An unfair labor practice was alleged in another Oregon case where two school secretaries were discharged. The secretaries claimed that the principal's personal notes (i.e., his "problem" file) were personnel records and were therefore accessible. The ERB dismissed the complaint and judicial review was sought. The state court of appeals reversed and remanded. On remand, the ERB ordered the district to reinstate the employees and to give them back pay. Furthermore, the principal was to cease and desist from maintaining his personal records and the district was to expunge all such records from the files. The court further noted that the evidence supported ERB's finding that the knowledge of the undisclosed files could have had a significant effect on the employee's conduct and the decision to terminate.[58]

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56. Michigan Educ. Ass'n v. North Dearborn Heights School Dist., 425 N.W.2d 503 (Mich. Ct. App. 1988).

57. Portland Ass'n of Teachers v. Portland School Dist., 764 P.2d 965 (Or. Ct. App. 1988).

58. Oregon School Employees Ass'n v. Lake County School Dist., 763 P.2d 160 (Or. Ct. App. 1988).

In yet another Oregon case, a maintenance worker was discharged allegedly because of his habitual tardiness. The plaintiff claimed that the district had failed to follow agreed upon procedures in reaching its decision to dismiss. The ERB denied the complaint and the union sought judicial review. The Oregon Court of Appeals held that where the collective bargaining agreement stipulated specific procedures and standards, the ERB was required to determine whether the district had complied.[59]

A nonrenewed North Dakota teacher sought mandamus in a case before the state supreme court.[60] The nonrenewal decision was based on the fact that the teacher had failed to earn either eight semester or twelve quarter hours of summer school and extension course credit every five years. The teacher claimed that he should be reemployed because he was able to earn the necessary credit prior to the beginning of the sixth year, although he in fact had not earned the credit by the end of the fifth school year as stipulated in the collective bargaining agreement. The state supreme court held that the teacher was not entitled to renewal of his contract due to his failure to meet the credit hour requirement.

A teacher in Wisconsin was discharged for gross sexual misconduct against a fellow teacher. The arbitrator upheld the dismissal and the teacher appealed. A circuit court judge denied the teacher's motion to intervene as an independent party and confirmed the decision. On further appeal, the state court of appeals upheld the lower court ruling.[61]

A custodian in Washington appealed a school board decision denying him the opportunity to file a grievance following layoff. The collective bargaining contract provided that seniority would be used in the event of layoff, unless the district determined that a less senior employee had greater ability and a better performance record. Furthermore, an employee could not be terminated without cause. Nevertheless, the plaintiff was laid off only ten days prior to the hiring of two new custodians and claimed to have equal or greater ability and performance record when compared to the junior employee who was retained at the time of his layoff. The trial court dismissed the complaint and the custodian appealed. The appeals court reversed based on procedural issues.[62]

In a second case involving a school custodian, a former employee sued the district seeking damages for breach of contract and mental suffering caused by the "outrageous conduct" of his former supervisors.

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59. Oregon School Employees Ass'n, Chapter 89v. Rainier School Dist. 13, 754 P.2d 9 (Or. Ct. App. 1988).

60. Feldhusen v. Beach Pub. School Dist., 423 N.W.2d 155 (N.D. 1988).

61. Milwaukee Bd. of School Directors V. Milwaukee Teachers' Educ. Ass'n, 422 N.W.2d 149 (Wis. Ct. App. 1988).

62. Trammell v. Riverview School Dist. No. 407, 752 P.2d 951 (Wash. Ct. App. 1988).

He alleged that he was periodically harassed on the job and that on one occasion, following a heated argument, was told to "get his ass out of the building." He later refused to return to work. His refusal was processed as a "quit." Shortly thereafter, the plaintiff filed a claim alleging termination without cause. Following a three-tiered grievance procedure, an arbitrator found that the plaintiff had voluntarily terminated his employment. The board accepted the decision, and the association did not contest the award. The former custodian, however, filed suit. The state court of appeals held that the evidence supported the finding of constructive discharge, but that the award for mental suffering was not precluded by the Workmen's Compensation Act or the Governmental Immunity Act. Accordingly, the case was remanded with directions.[63]

A teacher in Connecticut requested a leave of absence, which was granted. On his return, however, he failed to meet the contractual deadline for providing notice that he intended to return to work. As a result, he was not at that time reemployed, nor was he later rehired for his former job, or for any other. He then filed suit. On appeal, the state supreme court reasoned that the Teacher Negotiation Act and the arbitration statutes provide a preference for resolving disputes between teachers and boards through grievance proceedings and held that the trial court lacked subject matter jurisdiction.[64]

The State Employment Relations Board (SERB) in Ohio dismissed a charge by a public school employee that an unfair labor practice had occurred.[65] The association appealed that decision to a court of common pleas and later to the Ohio Court of Appeals, where the dismissal was affirmed. The appeals court reasoned that (1) the association did not have the right to file an appeal where administrative proceedings were quasi-judicial and (2) the SERB order dismissing the charge was not an "appealable final order."

A nontenured teacher in Kansas was nonrenewed for the upcoming year. No reason was given for the nonrenewal, while all prior evaluations of her work were satisfactory. She filed suit claiming that the board had breached its contractual duty to provide notice to her of any alleged unsatisfactory performance. The state supreme court held that the master agreement provision requiring notice of deficiency and a plan of assistance did not apply to her in the instant case and could not serve as a basis for a breach of contract claim. Only those teachers receiving unsatisfactory evaluations were eligible for assistance. Given the above,

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63. Hoffsetz v. Jefferson County School Dist. No. R-1, 757 P.2d 155 (Colo. Ct. App. 1988).

64. Kolenberg v. Board of Educ. of Stamford, 536 A.2d 577 (Conn. 1988).

65. Ohio Ass'n of Pub. School Employees v. Cleveland City School Dist. Bd. of Educ., 524 N.E.2d 532 (Ohio Ct. App. 1987).

because her performance was not evaluated as unsatisfactory, she was not eligible for assistance.[66]

A nontenured Illinois teacher was terminated by his local board allegedly in violation of the negotiated agreement. Such agreement requires certain procedures for evaluating and terminating teachers as well as grievance-arbitration procedures for resolving related disputes. After being terminated, the teacher filed a grievance and was awarded reinstatement and back wages and benefits. The district appealed to the circuit court where the arbitrator's award was vacated. On appeal, the appellate court reversed the circuit court holding and ruled that said court lacked jurisdiction to vacate or enforce an arbitration award because the original jurisdiction over educational disputes belonged exclusively to the Illinois Educational Labor Relations Board. That decision was affirmed on further appeal to the state supreme court.[67]

In Pennsylvania, an education association filed a grievance when a vocational-technical school discontinued its policy of offering teachers who had been demoted to half-time status the opportunity to substitute. The plaintiffs challenged the practice based on wording within the collective bargaining agreement requiring that "[n]o professional employee shall be reduced in rank or compensation or deprived of any professional advantage as defined in the Public School Code without just cause . . . ." The arbitrator sustained the grievance and noted that although the contract did not provide recall rights for the demoted teachers, such rights did in fact exist under state law. The district appealed the arbitrator's decision and the trial court vacated the award. That decision, however, was reversed on appeal to the Commonwealth Court of Pennsylvania. That court held that because the bargaining agreement incorporated the school code, the arbitrator's decision was encompassed within the agreement and had to be given deference by the court under the "essence test."[68]

In another Pennsylvania case, a nontenured teacher was evaluated as unsatisfactory and was told that his employment would be terminated at the conclusion of the year. The teacher then filed a grievance requesting that an arbitrator determine the appropriateness of both the procedure and the decision. The district initially refused to arbitrate because it claimed that the agreement did not apply to nontenured teachers, but, following the filing of an unfair labor practice charge, entered into an agreement to arbitrate. The arbitrator held in favor of the teacher and the

66. Miller v. Board of Educ. Unified School Dist. 470, 752 P.2d 113 (Kan. 1988).

67. Board of Educ. of Community School Dist. No. 1, Coles County v. Compton, 526 N.E.2d 149 (Ill. 1988).

68. Northumberland County Area Vocational-Technical School Educ. Ass'n v. Northumberland County Area Vocational-Technical School, 547 A.2d 1287 (Pa. Commw. Ct. 1988).

district appealed. The court held that the arbitrator's decision was not unreasonable and drew its essence from the terms of the agreement.[69]

Promotion. A junior employee in Iowa was promoted over two more senior employees, while one of the senior employees was not reinstated after she had resigned. A grievance was filed with the ERB, but was dismissed; the ERB had concluded that the district had successfully rebutted the prima facie case by showing a legitimate business justification for each of its disputed personnel decisions. The state court of appeals upheld the ERB decision.[70]

Impasse and Fact-Finding

The Department of Defense Dependents Schools (DODDS) operates schools in twenty countries where there are United States military installations. An impasse had resulted in negotiations involving DODDS and the teachers' union, the Overseas Federation of Teachers. The Fourth Circuit Court of Appeals held that when the Federal Services Impasses Panel delegates its authority to resolve bargaining impasses to an individual panel member, decisions of that member, which become part of the negotiated agreement, are subject to agency head review.[71]

Strikes and Sanctions

This section includes four cases dealing with teacher strikes: three from Pennsylvania and one from Oregon. In the first Pennsylvania case, a school district and an education association were unable to agree to the terms of a new contract. As a result, the teachers went on strike. A tentative agreement was agreed to following the filing of suit by the district seeking an injunction to direct the teachers to go back to work. However, when the agreement was to be formalized, two board members who originally had voted for the contract later voted against acceptance. The teachers then filed an unfair labor practice suit. The trial court, and later the commonwealth court on appeal, concluded that the district was not acting in good faith and that it had committed an unfair labor practice.[72]

In the second Pennsylvania case, the state supreme court was asked to reconcile two state laws: the Public Employees Relations Act, which gives teachers the right to strike; and the Public School Code, which mandates

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69. Mifflinburg Area Educ. Ass'n v. Mifflinburg Area School Dist., 545 A.2d 419 (Pa. Commw. Ct. 1988).

70. Valley Educ. Support Personnel Ass'n v. Public Employment Relations Bd., 420 N.W.2d 495 (Iowa Ct. App. 1988).

71. Department of Defense Dependents Schools, Alexandria, Va. v. Federal Labor Relations Auth., 852 F.2d 779 (4th Cir. 1988).

72. St. Clair Area School Dist. v. St. Clair Area Educ. Ass'n, 552 A.2d 1133 (Pa. Commw. Ct. 1988).

that school districts provide 180 days of pupil instruction. Teachers in Jersey Shore Area School District had been on strike for one month when the Chancellor issued an injunction ordering the teachers back to work. On appeal, the commonwealth court affirmed solely on the basis that the district would not be able to provide instruction for the required 180 days if classes did not begin again, thus resulting in a loss of state subsidies. On further appeal, the state supreme court affirmed, although it disagreed with the appeals court that the threatened loss of subsidies alone would support the issuance of an injunction. The court went further to observe that there were a myriad additional economic and other factors supporting the need to end the strike and that the strike had resulted in "impending and . . . ever-increasing harm which was being wrought upon [the] students," and that, "the health and welfare of the students . . . was clearly endangered and threatened."[73]

In the final Pennsylvania case, a common pleas court judge had ordered striking teachers to return to work. His decision then was appealed to the commonwealth court. Similar to the above case, the court held that the strike made it unlikely that 180 instructional days could be offered by the district and the district would therefore lose state subsidies. Accordingly, the commonwealth court found that an injunction had been properly issued by the trial court. However, the commonwealth court further concluded that the trial court had exceeded its authority when it ordered bargaining to continue and when it dictated bargaining hours.[74]

In the final case in this subsection and chapter, parents of two elementary school children in Oregon filed suit claiming that their children's state constitutional rights were violated by a statute authorizing teacher strikes. They sought to bar the local education association from striking, to require the union and the school district to submit to binding arbitration, and to have the Public Employees Collective Bargaining Act declared unconstitutional, insofar as it authorized the right to strike. However, the strike ended prior to resolution of the dispute in court. Nevertheless, the parents claimed that the charges were not moot since they were capable of repetition. The state court of appeals disagreed and declared each of the claims moot: the strike was over; there was no continuing need for arbitration; and the parents were not seeking relief against future strikes.[75]

CONCLUSION

The number of cases dealing with collective bargaining continues to

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73. Jersey Shore Area School Dist. v. Jersey Shore Educ. Ass'n, 548 A.2d 1202, 1207-1208 (Pa. 1988).

74. Armstrong Educ. Ass'n v. Armstrong School Dist., 542 A.2d 1047 (Pa. Commw. Ct. 1988).

75. Reiman v. Eugene Educ. Ass'n, 759 P.2d 295 (Or. Ct. App. 1988).

be significant, particularly in those states with liberal bargaining laws (e.g., Ohio, Pennsylvania). The vast majority of cases were filed in state courts and were based on state law. This trend no doubt will continue. Cases decided this past year were typical of those filed in recent years. Common topics continued to be scope of bargaining, arbitrability, and conditions of employment. No new trends or directions are seen for 1989.